



## **Supreme Court validates Oklahoma Turnpike Authority bonds**

(eCap) The Oklahoma Supreme Court validated the first phase of bonds Tuesday for the Oklahoma Turnpike Authority's Driving Forward initiative.

Oklahoma City attorney Jerry Fent had challenged the bond's validation. A referee heard Fent's arguments October 11. The full court did not hear oral arguments in the case.

"The proposed bond issue was properly authorized," the court wrote in a unanimous decision.

Fent contended the 1987 statute being cited to authorize the two Oklahoma County projects violated the Article 5, Section 57 Oklahoma Constitution's logrolling prohibition, also known as the single-subject provision. The court rejected that argument, saying the Turnpike Authority is authorized to combine multiple projects for the purpose of issuing bonds. "Because the requested bonds all relate to the construction and/or improvement of turnpikes, we find the authority's application does not violate the single subject rule," the court wrote.

Fent raised that issue in a separate suit filed in August. The court rejected Fent's request for a declaratory relief and ruled his request for affirmative relief duplicative as a results of the Turnpike Authority's validation request.

Fent also argued the cross pledging of turnpike revenues for the payment of bonds on other toll road construction projects amounted to an illegal perpetuity. The court, however, said Fent failed to cite supporting legal authority "...showing how there is a violation of the rule against perpetuity concerning the issuance of government bonds with a concrete maturity date."

Fent had cited a 1933 U.S. Supreme Court case involving a privately operated toll bridge over the Canadian River between Cleveland and McClain Counties. The bridge's toll was challenged by an out-of-state resident in federal district court. The driver won but the decision was appealed to the Tenth Circuit Court, which reversed the lower court's decision. The driver, Fent said, appealed the case to the U.S. Supreme Court that overturned the Tenth Circuit Court's decision citing the state's ban on perpetuities.

The court's validation of the bond issue allow it to move forward and for a series of toll increases that will be used to help pay the bonds to begin taking effect.

The first phase of the bond issue is set to be \$480 million. The total \$935 million Driving Forward initiative includes a new turnpike in eastern Oklahoma County and work on the Gilcrease Expressway, the Muskogee Turnpike, the Turner Turnpike, the H.E. Bailey Turnpike, and the Kilpatrick Turnpike.

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## **Oklahoma Supreme Court finds 2014 abortion legislation unconstitutional**

(eCap) The Oklahoma Supreme Court overruled a district court Tuesday and found unconstitutional a 2014 bill that required the State Board of Health to establish certain requirements for abortion facilities and requiring a physician with admitting privileges at an accredited hospital within 30 miles of where the abortion is being performed to remain on the premises of the facility.

The court cited two reasons for the decision. It said the various requirements violated the Oklahoma Constitution's single subject provision and its physician admitting privileges requirement violated the U.S. Constitution by placing an undue burden on a woman's access to abortion.

The bill, 2014's Senate Bill 1848, allows the State Board of Health to establish abortion facility, supplies and equipment standards

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### **Quote of the Day**

*"It's basically a brand that would state this animal has been known to carry bovine viral diarrhea so that somebody can't take it to the sale, sell it for cheap and that person takes it to another sale, doesn't disclose that it's positive and sells it for a higher amount."*

Deputy Commissioner of Agriculture and Legislative Liaison Betty Thompson

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as defined in the bill. The bill states on any day when any abortion is performed in a facility providing abortions, a physician with admitting privileges at an accredited hospital in the state within 30 miles of where the abortion is being performed must remain on the premises of the facility. The bill allows the board to adopt standards relating to the training of physician assistants and volunteers at facilities. The board will adopt standards related to the medical screening and evaluation of each abortion patient. The bill requires the board to adopt standards related to the performance of abortion procedure and post-procedure follow-up care as defined in the bill. The bill states facilities performing abortions will record each incident and write about such to the board within 10 days. The bill states whoever operates a facility performing abortions without a valid license will be guilty of a felony. The bill states any violation of the act or standards of the act will result in a civil penalty or fine up to \$25,000.

The bill was authored by Sen. Greg Treat, R-Oklahoma City, and former Rep. Randy Grau, R-Edmond. It was scheduled to take effect November 1, 2014, but its enactment was stayed pending the outcome of the case. The decision notes the stay remains in effect while the case, which was brought in Oklahoma County district court, is returned to the court for final resolution under Tuesday's decision.

The court wrote in its unanimous decision that "...Senate Bill 1848 is fatally flawed legislation under our federal Constitution and the recent pronouncements in *Hellerstedt*," a U.S. Supreme Court decision from June. In that case, the federal high court ruled unconstitutional a Texas law with similar admitting privileges requirements.

The court also wrote, "This legislation illustrates the reason for the enactment of the constitutional provision known as the single subject rule which was designed as a constitutional safeguard to prevent logrolling. At the heart of this rule is to insure that 'each piece of legislation is worthy of the approval of the voter...' We hold Senate Bill 1848 violates the single subject rule and also fails under our Oklahoma Constitution."

The bill was challenged by the Center for Reproductive Rights on behalf of Dr. Larry Burns. Nancy Northup, president and chief executive officer of the organization, said in a press release, "Today's decision is a victory for Oklahoma women and another rebuke to politicians pushing underhanded laws that attack a woman's constitutionally guaranteed right to safe, legal abortion.

"We will continue to stand with Oklahoma women in beating back these relentless political schemes designed to make the right to safe, legal abortion a right that only exists on paper."

According to the center, Gov. Mary Fallin has signed into law 19 pieces of legislation restricting access to reproductive health care services. The Center for Reproductive Rights has challenged eight of those measures in the last four years, each successfully.

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## **High income tax deposit pushes General Revenue collections above monthly estimate**

(eCap) Office of Management and Enterprise Services Director Preston Doerflinger said an unexpectedly high individual income tax deposit in November pushed General Revenue Fund collections 7.3 percent above the monthly estimate. Sales tax collections, however, continue to slide, resulting in year-to-date total receipts for the fiscal year below the estimate.

Doerflinger said the November's fiscal year 2017 estimate was reduced because 2016 collections for the month were 13 percent below the estimate and a previous history of larger Quality Jobs refunds and other rebates this time of year. As a result, individual income tax collections of \$111.7 million came in \$45 million or 67.6 percent above the estimate and \$1.3 million or 1.1 percent above the prior year.

General Revenue Fund (GRF) collections in November totaled \$342.5 million, which is \$23.3 million or 7.3 percent above the official estimate upon which the FY2017 appropriated state budget was based and \$11.6 million or 3.3 percent below prior year collections. Total GRF collections through the first five months of FY 2017 are \$2 billion, which is \$7.2 million or 0.4 percent below the estimate and \$166 million or 7.8 percent below prior year collections.

"There are certain encouraging signs, but we're still below last year's collections and the yearly estimate," Doerflinger said. "The sliding sales tax receipts are an indicator that we must still remain ready for some tough challenges ahead."

Last month, GRF collections were 1.8 percent below the fiscal year estimate and 8.7 percent below the prior year collections.

"We've been saying for more than a few months now that the sales tax collections are some of the more troubling numbers," said Doerflinger, who also serves as Gov. Mary Fallin's Secretary of Finance, Administration and Information Services. "Sales tax collections are probably a better gauge of where things stand than the fluctuating income tax receipts."

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Doerflinger reported sales tax collections for November were \$151 million, which was \$13.5 million or 8.2 percent below the estimate and \$9.5 million or 5.9 percent below the prior year. Sales tax collections have remained below the estimate for 21 of the last 22 months. Sales tax makes up about 35 percent of the GRF's annual collections and a large portion of city service budgets.

"The state will continue seeing sales tax declines with a depressed energy sector and consumer spending shifting from brick and mortar operations to online outlets and the services sector," Doerflinger said.

Other major tax categories in November contributed the following amounts to the GRF:

Total income tax collections of \$111.7 million were \$44.6 million or 66.4 percent above the estimate and \$1.3 million or 1.1 percent above the prior year. Individual income tax collections of \$111.7 million were \$45 million or 67.6 percent above the estimate and \$1.3 million or 1.1 percent above the prior year. Corporate income tax collections were entirely consumed by refunds and contributed nothing to the General Revenue Fund. This was the case for the same month last year, as well.

Gross production tax collections of \$12.6 million were \$2.9 million or 18.5 percent below the estimate and \$3.8 million or 42.5 percent above the prior year. Natural gas collections of \$11.1 million were \$4 million, or 26.8 percent, below the estimate and \$2.5, or 28.8 percent, above the prior year. Oil collections of \$1.6 million were \$1.2 million or 299 percent above the estimate and \$1.3 million or 451.3 percent above the prior year.

Motor vehicle tax collections of \$14.5 million were \$798,000, or 5.8 percent above the estimate and \$140,000 or 1 percent above the prior year.

Other revenue collections of \$52.7 million were \$5.7 million or 9.7 percent below the estimate and \$7.3 million or 12.1 percent below the prior year.

The figures will be the last actual collection figures that will be used by the Oklahoma Tax Commission and the Office of Management and Enterprise Services in their calculations of the FY2018 revenue estimate. That estimate will be considered December 21 by the Board of Equalization and used by Fallin for the development of her executive budget.

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### **Fallin to extend deadline for justice reform tax force**

(eCap) Gov. Mary Fallin announced Tuesday she will extend the deadline for her justice reform task force.

"To deliver the type of significant improvement Oklahoma needs, I am asking the task force to take the achievable, responsible ideas it already has a step further. The task force already has ways to save thousands of prison beds while increasing mental health treatment and public safety, and I want it to make those good ideas even better over the next month," Fallin said in a statement Tuesday.

Fallin created the Justice Reform Task force by executive order in July. The order called for the task force to submit a final report containing a detailed statement of its findings and policy recommendations to the governor, House Speaker and Senate president pro tempore by no later than Thursday. Fallin said Tuesday she will modify the order to extend the date to some time prior to February 6, when lawmakers will begin the consideration of legislation.

The task force is charged with developing data-driven policy recommendations to improve public safety, control corrections spending and improve recidivism rates for consideration during the 2017 legislative session. It includes law enforcement officers, prosecutors, judges, members of the business community, victim advocates, mental health and addiction professionals, and legislators. It has been receiving technical assistance from two national criminal justice experts: Crime and Justice Institute and the Pew Charitable Trusts.

"I am hearing increasing interest from legislators and community leaders about continuing to move the ball on criminal justice reform, and I expect this task force to deliver the bold ideas Oklahoma needs to do that," Fallin said. "We can do better in dealing with nonviolent, low offenders who have mental health conditions or who are addicted to drugs or alcohol with appropriate treatment, rather than felony prosecution and long-term incarceration."

Fallin said in her statement that the task force's recommendations will build upon the criminal justice reform legislation the Legislature passed and Fallin signed into law earlier this year. The recommendations will also follow voter approval of State Questions 780 and 781 in November. SQ 781 will reduce the penalties for some nonviolent crimes.

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"Smart, conservative states such as Texas, Utah, Georgia, Kentucky and South Dakota are already headed this direction; Oklahoma voters have already headed this direction, and we, the elected officials, need to do the same," Fallin said.

The full task force and its subcommittees have been meeting regularly, including as recently as last week.

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## **Department of Agriculture requests several pieces of legislation for upcoming session**

(eCap) The Oklahoma Department of Agriculture, Food and Forestry (ODAFF) has requested 12 pieces of legislation to be filed during the upcoming session, said Deputy Commissioner and Legislative Liaison Betty Thompson in an interview after Tuesday's board meeting.

Thompson said ODAFF worked with a few other organizations and agencies on a few pieces of legislation, including one with the Oklahoma Bureau of Narcotics and Dangerous Drugs relating to which herbicide can be used on illegal marijuana plants.

"The statute specifies what herbicide can be used and it's really out of date so they're wanting to change that language to allow the freedom to spray it with whatever they need to spray it with to kill it," she said.

ODAFF is also working with the Oklahoma Department of Tourism to transfer the Forest Heritage Center between agencies. Thomson said Tourism was looking to potentially close the center so the two agencies are working on an agreement moving forward.

Thompson also said the agency has worked with the Cattlemen's Association and the Livestock Marketing Association to require an animal known to have bovine viral diarrhea to be branded.

"It's basically a brand that would state this animal has been known to carry bovine viral diarrhea so that somebody can't take it to the sale, sell it for cheap and that person takes it to another sale, doesn't disclose that it's positive and sells it for a higher amount," she said. "It takes out the whole only working on honesty factor."

ODAFF is also looking to add a farmer's market limited liability provision in which there is a general assumption of risk, prohibiting an individual from filing a lawsuit for certain incidents.

The next few bills are simple modifications relating to food safety and milk laws, municipality waivers for Concentrated Animal Feeding Operations, privatization of the Oklahoma Sorghum Commission, regulations for seed dealers and mung bean operations, and modifications to attorney fee payment in the nuisance provision.

Thompson said ODAFF has once again requested legislation that would allow volunteer firefighters to obtain workers compensation through the Office of Management and Enterprise Services.

Next, Thompson said the Wildlife Division has requested that they be allowed to carry weapons other than rifles. She noted that currently they can carry rifles and ammunition. Also, the bill would require they obtain firearm training, which they are not currently required to do.

Lastly, Thompson said ODAFF may or may not move forward with legislation modifying how Volunteer Fire Operational Grants are distributed. Currently, grants are distributed to equally to volunteer fire departments, though the new language would distribute the money on the basis of need.

"A firehose has to be disposed after one use and they're incredibly expensive. Obviously are incurring a lot more expenses if they have multiple runs as opposed to a fire department that hasn't done any runs or significantly," she said. "So we would love to be able to distribute it to the fire departments that have more expenses or desperately need that funding as opposed to doing it equally."

Language has not yet been drafted for any of the bills, though ODAFF general counsel is doing so now, she said. As for thoughts on the upcoming session, Thompson said she hopes to be able to answer all questions asked by legislators.

"It's my first session. My biggest concern right now is I've only been in the job for seven months so a lot of times when I run across an issue I go and talk to that director because I need to be well versed," she said. "With it being my first session if I have to call for reinforcements than that's what I'll do."

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## **Board of Health adopts signage rules, others**

(eCap) The State Board of Health approved a proposed rule Tuesday mandated by the "Humanity of the Unborn Child Act," requiring regulated entities to post signage in their restrooms directing pregnant women to assistance.

The proposed rule, presented to the board by General Counsel Donald Maisch, stems from House Bill 2797. Maisch explained that a vast majority of the act is dependent upon the availability of necessary funds.

Three provisions however do not contain funding language. The rules required to make those provisions effective were what came before the board Tuesday. The provisions relate to the placement of signage in the public restrooms of department-licensed facilities with Legislature-approved language and including the information set forth in the bill on the OSDH's website.

The bill, by Rep. Ann Coody, R-Lawton, Rep. Lisa J. Billy, R-Purcell, Rep. Pam Peterson, R-Tulsa, and Sen. A J Griffin, R-Guthrie, requires the State Department of Health to develop, update annually and maintain an electronic form containing information concerning public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent. It provides required information to provide on said list. It requires the Department to index this form geographically and readily accessible on its website. It provides a statement required to be included on said website. It requires said statement to include a hyperlink to the Department's website containing the aforementioned information and available in a downloadable format appropriate for display. It requires that the Department make available to each facility in Oklahoma which is open to the public, containing a restroom available to the public and licensed by the Department to post signage in its restroom containing the aforementioned statement on or before January 1, 2018. It designates the State Board of Health to promulgate rules.

Facilities licensed through the OSDH include hospitals, nursing homes, restaurants and public schools. Representatives of these industries were given the opportunity to air concerns on the proposed rules via public comment taken from October to the first week of November as well as a public meeting held November 6.

Entities represented in the public comments include the Oklahoma Hospital Association (OHA), Oklahoma Restaurant Association, Oklahoma State Medical Association and more. Many of the bodies expressed concern with the costs associated with the placement of the signs.

OHA projected the cost to post the signs in the restrooms of all 140 licensed hospitals in the state to be at least \$225,000 within its system and the estimated fiscal impact on the other licensed industries to be about \$2.1 million.

In a statement, Griffin said she felt the estimated cost to be "far too high." She added however that she and the rest of the Legislature will listen to the concerns of the state's business community and work with them "to ensure this effort to protect Oklahoma infants will not be overly burdensome."

Ryan Kiesel, executive director of the ACLU of Oklahoma, referred to the bill and proposal as another "absurd and callous" effort by the Legislature "to shame and stigmatize women," adding the organization is considering a range of legal options to its final passage.

"In the wake of public outcry from the business community, some legislators now promise a supposed quick fix to this problematic law in the upcoming session," Kiesel via press release. "We call on the legislators of both parties who voted for this campaign of shame and stigmatization against Oklahoma's women to reassess their priorities and protect the fundamental rights and autonomy of women at the outset, not just when doing so accidentally aligns with political expediency."

Through public comment, the agency also implemented three updates to its original proposal.

Maisch said a provision relating to required font size was removed with the language now requiring the signs to be "reasonable legible." Another change now includes the OSDH's website be included in the language of the sign.

The final change concerned a provision in the original language allowing the signs to be placed in other locations, not just restrooms.

"Many of the public comments dealt with the fact that's not part of the law. We agreed," Maisch said, explaining the provision was then stricken.

In an interview, Maisch confirmed there is currently no penalty in place for those that do not comply with the rule. In her statement, Used and reprinted with written permission of ©2010-16 ecapitol LLC



Griffin said the law would be contingent on an honor system.

There is also no provision requiring the postage of multi-language signs included in the original bill and therefore not reflected in the proposal.

Board member Timothy Starkey took issue with provision that places the expenses related to the signs on the licensed, rather than the department.

"My concern is that the rules cause excess cost to our facilities in the state, especially those with large facilities and many public restrooms," he said. "That was not the intent of the original legislation."

In her release, Griffin explained her original intent for the bill was simply to provide women with information and alternatives to abortion.

Starkey represented the sole nay vote Tuesday, with the rest of the board voting in favor of the proposal. In a later interview, Starkey said the reason for his no vote was "strictly financial."

The board also approved five other proposed rules, one of which was also mandated via legislation. These rules included:

- Required by House Bill 2835, regulations removing the age limitation for clinical trials on the use of cannabidiol.
- Modification to rules related to proof of training and expertise required for an applicant to take the body piercing and tattoo license examination.
- A number of rule changes related to childhood lead poisoning prevention.
- Changes related to communicable disease and injury reporting.
- An update to existing rules regarding rabies vaccination.

The board voted in favor of the aforementioned rules, all of which now move to the Legislature and Gov. Mary Fallin for final approval. Should either decide to make changes, a motion can be made to disapprove a given rule without it going into effect.

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### **DHS to use agency attorneys to speed up adoptions**

(PRESS) The Department of Human Services announced Monday a new initiative to more quickly and efficiently finalize adoptions for children in foster care who are legally-free. The DHS Legal Services division has created an Adoption Unit whose sole function is to assist prospective adoptive parents as they manage and finalize the adoption process for children in state custody.

"When we first considered this concept, we recognized there was an opportunity for an attorney to get directly involved as soon as the child became available for adoption," says DHS General Counsel, Ron Baze. "By utilizing attorneys directly employed by DHS, prospective adoptive parents are provided assistance from counsel much earlier than they would get with most privately-retained attorneys."

The Adoption Unit will get involved as soon as the child becomes available for adoption. This allows the attorney to not only ensure each step of the adoption process is timely completed but also be available to act as an intermediary between the adoptive parents, the DHS workers, and others involved in the adoption process, including the courts.

"Another added benefit is DHS Adoption Attorneys have timely and complete access to records and DHS personnel that are otherwise not available to an attorney in the private sector," said Baze.

Attorney Scott Raybern is the agency's first attorney hired within the DHS Legal Services Adoption Unit. Raybern's background is in child welfare as well as time served as an Assistant District Attorney and working within DHS in its Office of Inter-Governmental

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## Relations and Policy.

"I am incredibly excited about this opportunity to work directly with the permanency and adoption workers," said Raybern. "My job is to assist both the workers and the prospective adoptive parents as we complete the adoption process and get kids to a permanent placement as quickly and as smoothly as possible."

Prospective adoptive parents still have the option to use a private attorney if they choose. And while the vast majority of adoptions involving DHS are uncontested, in the event more than one party seeks to adopt the same child or children, the DHS Adoption Unit will not get involved and the parties will have to retain their own private counsel.

"This Adoption Unit is an opportunity to get children out of foster care and into permanent and loving homes as soon as is absolutely practical," said Baze. "And if we can get kids into their new homes sooner than they would get there without our help then this will be a worthwhile effort."

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